

Order

Michigan Supreme Court
Lansing, Michigan

March 8, 2005

Clifford W. Taylor
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

ADM File No. 2005-06

Amendment of Rule 5.784 of the Michigan Court Rules

On order of the Court, the need for immediate action having been found, the notice requirements are dispensed with and the following amendment of Rule 5.784 of the Michigan Court Rules is adopted, effective immediately. MCR 1.201(D). The amendment will be considered at a future public hearing by the Court. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

[Additions are indicated in the text that follows by underlining.]

Rule 5.784 Proceedings on a Durable Power of Attorney for Health Care or Mental Health Treatment

- (A) Petition, Who Shall File. The petition concerning a durable power of attorney for health care or mental health treatment must be filed by any interested party or the patient's attending physician.
- (B) Venue. Venue for any proceeding concerning a durable power of attorney for health care or mental health treatment is proper in the county in which the patient resides or the county where the patient is found.
- (C) Notice of Hearing, Service, Manner and Time.
 - (1) Manner of Service. If the address of an interested party is known or can be learned by diligent inquiry, notice must be by mail or personal service, but service by mail must be supplemented by facsimile or telephone contact within the period for timely service when the hearing is an expedited hearing or a hearing on the initial determination regarding whether the patient is unable to participate in medical or mental health treatment decisions.
 - (2) Waiving Service. At an expedited hearing or a hearing on an initial determination regarding whether the patient is unable to participate in medical or mental health treatment decisions, the court may dispense with notice of the hearing on those interested parties who could not be contacted after diligent effort by the petitioner.

- (3) Time of Service. Notice of hearing must be served at least 2 days before the time of a hearing on an initial determination regarding whether the patient is unable to participate in medical or mental health treatment decisions. Notice of an expedited hearing must be served at such time as directed by the court. Notice of other hearings must be served at such time as directed by MCR 5.108.

(D) Hearings.

- (1) Time. Hearings on a petition for an initial determination regarding whether a patient is unable to participate in a medical or mental health treatment decision must be held within 7 days of the filing of the petition. The court may order an expedited hearing on any petition concerning a durable power of attorney for health care or mental health treatment decisions on a showing of good cause to expedite the proceedings. A showing of good cause to expedite proceedings may be made ex parte.
- (2) Trial. Disputes concerning durable powers of attorney for health care or mental health treatment decisions are tried by the court without a jury.
- (3) Proof. The petitioner has the burden of proof by a preponderance of evidence on all contested issues except that the standard is by clear and convincing evidence on an issue whether a patient has authorized the patient advocate under a durable power of attorney for health care to decide to withhold or withdraw treatment, which decision could or would result in the patient's death, or authorized the patient advocate under a durable power of attorney for mental health treatment to seek the forced administration of medication or hospitalization.
- (4) Privilege, Waiver. The physician-patient privilege must not be asserted.

- (E) Temporary Relief. On a sufficient showing of need, the court may issue a temporary restraining order pursuant to MCR 3.310 pending a hearing on any petition concerning a durable power of attorney for health care or mental health treatment.

Staff Comment: Public Acts 532, 551-557, and 559 of 2004, effective January 3, 2005, authorize a durable power of attorney for mental health treatment decisions. The amendments of MCR 5.784 broaden the rule to cover proceedings concerning durable powers of attorney for mental health treatment.

The staff comment is not an authoritative construction by the Court.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 8, 2005 Angie J. Meyer
Deputy Clerk